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April 8, 2009

**Via ECFS**

Marlene H. Dortch, Secretary  
Office of the Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

**Re: WC Docket No. 09-37: In the Matter of the Application of Yak America Inc., Assignee, and USD CLEC, Inc. Assignor, for Grant of Authority Pursuant to Section 214 of the Communications Act of 1934, as amended, and Section 63.04 of the Commission's Rules for an Assignment of Certain Assets and Customers of USD CLEC, Inc., Assignor, to Yak America, Inc.**  
**AMENDED APPLICATION**

Dear Ms. Dortch:

On behalf of Yak America, Inc. and USD CLEC, Inc. (together, "Applicants"), attached is Applicants' Amended Application for Section 214 authority for the assignment of certain assets and customers of USD CLEC, Inc. to Yak America, Inc.

Please direct any questions regarding this filing to the undersigned.

Respectfully submitted,



Brett P. Ferenchak

Counsel for Yak America, Inc.

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Hong Kong  
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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of the Application of	)	
	)	
<b>Yak America Inc.</b> , Assignee,	)	WC Docket No. 09-37
	)	
and	)	
	)	
<b>USD CLEC, Inc.</b> , Assignor,	)	
	)	
For Grant of Authority Pursuant to	)	
Section 214 of the Communications Act of 1934,	)	
as amended, and Section 63.04 of the	)	
Commission's Rules for an Assignment of	)	
Certain Assets and Customers of USD CLEC, Inc.,	)	
Assignor, to Yak America, Inc.	)	
	)	

**AMENDED APPLICATION**

Yak America Inc. ("Yak" or "Assignee") and USD CLEC, Inc. ("USD" or "Assignor") (together, "Applicants"), through undersigned counsel and pursuant to Section 214 of the Communications Act, as amended, 47 U.S.C. § 214, and Section 63.04 of the Commission's Rules, 47 C.F.R. § 63.04, respectfully request Commission approval or such authority necessary or required for the acquisition by Yak of substantially all of the assets related to the operation of the casual calling/dial-around business (the "Business") of USD.<sup>1</sup> The transaction for which approval is sought does not involve any presubscribed local or long distance telecommunications customers. Upon completion of the transfer of casual calling/dial around assets, Yak began

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<sup>1</sup> USD is currently in Chapter 11 bankruptcy in the U.S. Bankruptcy Court for the Northern District of New York. (Chapter 11 Case Nos. 08-32560-5, 08-32561-5, 08-32562-5) and became a Debtor-in-Possession upon that filing. On March 20, 2009, the Bankruptcy Court approved the sale of all of the remaining assets of USD and its parent company and affiliate, with closing expected to occur on April 1, 2009. The partial sale transaction that is the subject of this application has already been completed, *see* note 2, and is unrelated to the sale of assets of USD approved by the Bankruptcy Court on April 1, 2009.

offering regulated telecommunications services to those casual calling customers previously served by USD. USD will retain its domestic 214 authorization and Yak is not requesting the assignment of that authorization.<sup>2</sup>

In support of this Application, Applicants provide the following information:

## **II. DESCRIPTION OF THE PARTIES**

### **A. Yak America Inc.**

Yak America Inc. is a corporation organized under the laws of the State of Florida and was incorporated on March 8, 2001. Yak's principal place of business is located at 300 - 71st Street, Miami Beach, Florida 33141. Yak America is authorized to provide and does provide resold interexchange telecommunications services in all of the contiguous 48 states, and the District of Columbia. The services offered by Yak include basic 1+ long distance services, 10-10 casual calling services and calling card services.

Yak provides interstate service by virtue of blanket domestic Section 214 authority. 47 C.F.R. § 63.01. Yak also holds international Section 214 authority to provide global or limited global facilities-based service and global or limited global resale service granted in IB File No. ITC-214-20010508-00303 (June 8, 2001).

### **B. USD CLEC, Inc.**

USD CLEC, Inc. is a New York corporation and wholly owned subsidiary of US Datanet Corporation ("Datanet" and together with USD, the "Sellers"), a Delaware corporation. Both Sellers maintain a principal place of business at 318 South Clinton Street Suite 502-502, Syracuse, New York 13202. Prior to the transaction, USD provided the regulated telecommunications services of Sellers; Datanet does not provide any telecommunications services. USD is

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<sup>2</sup> The commercial transaction closed on July 24, 2008, but the "customer migration" to Yak's services was not completed until November 1, 2008. Therefore, Applicants are concurrently filing an Amended Request for Special Temporary Authority.

authorized to provide interstate telecommunications services by virtue of blanket domestic Section 214 authority. 47 C.F.R. § 63.01. USD is currently in Chapter 11 bankruptcy in the Bankruptcy Court for the Northern District of New York. On March 20, 2009, the Bankruptcy Court issued a Sale Order permitting the sale of all of the remaining assets of USD and its parent company and affiliate, with closing expected on April 1, 2009. For purposes of clarification, that sale in bankruptcy is unrelated to the prior transaction with Yak that is the subject of this Amended Application.

### **III. DESCRIPTION OF THE TRANSACTION**

Pursuant to the terms of an Asset Purchase Agreement dated July 10, 2008, among Yak, Datanet, USD and USD Management and Network Services, Inc., Yak purchased substantially all of the assets related to the operation of Datanet's casual calling/dial-around business (the "Business").<sup>3</sup> The regulated telecommunications services associated with the Business were previously provided by USD. As a result of the transaction, Yak provides all the service, regulated and unregulated, of the Business.

The Transaction did not involve the assignment of Section 214 authority from USD to Yak because Yak holds its own domestic and international 214 authority.<sup>4</sup> Immediately following the closing, Yak continued to offer to the affected customers the same casual calling/dial-around services at the same terms and conditions and the same or lower rates. Although the commercial transaction closed on July 24, 2008, the "customer migration" to Yak's services was

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<sup>3</sup> The transaction did not involve the transfer of any presubscribed local or long distance telecommunications customers.

<sup>4</sup> In addition, the transaction did not involve USD's other business of providing hosted IP communication services, audio conferencing services, nationwide integrated VoIP PRI, dedicated Internet services, IP termination-origination services and collocation services.



not completed until November 1, 2008.<sup>5</sup> In this context of casual calling/dial-around services, the “customer migration” entailed only the transfer of any outstanding accounts and customer records. All known interested customers of Sellers received notice that the casual calling/dial-around services previously offered by Sellers would now be provided by Yak. None of these customers was pre-subscribed to any service offered by Sellers and none is pre-subscribed to Yak’s services.

#### **IV. INFORMATION REQUIRED BY SECTION 63.04(a)**

Pursuant to Section 63.04(a) of the Commission’s Rules, 47 C.F.R. § 63.04(a), Yak submits the following information in support of its request for approval to transfer control of a domestic Section 214 authority:

**(a)(1)** Name, address and telephone number of each Applicant:

Assignor

USD CLEC, Inc.  
318 S. Clinton Street  
Suite 502  
Syracuse, NY 13202  
877-499-2368

**FRN: 0014414114**

Assignee:

Yak America Inc.  
300 - 71st Street  
Miami Beach, Florida 33141  
416-229-9333

**FRN: 0004371704**

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<sup>5</sup> Subsequent to closing, the Sellers and Yak had a dispute regarding amounts Sellers claimed Yak owed Sellers under the transaction. Datanet filed an adversary proceeding in the Bankruptcy Court to recover those amounts. *See* US Datanet Corp., et al v. Yak America, Inc., AP No. 08-50058 (Bankr. N.D.N.Y.). Sellers and Yak settled the dispute by entering into a payment plan including a promissory note secured by the assets acquired by Yak from Sellers. *See* Stipulation and Order Settling Adversary Proceeding, US Datanet Corp., et al v. Yak America, Inc., AP No. 08-50058 (Bankr. N.D.N.Y. Feb. 5, 2009). While Sellers retain a security interest in assets acquired by Yak until the promissory note is satisfied, the adversary proceeding and settlement did not undo the transaction.

(a)(2) Jurisdiction of Organizations:

Assignor: USD is a corporation formed under the laws of New York.

Assignee: Yak is a corporation formed under the laws of Florida.

(a)(3) Correspondence concerning this Application should be sent to:

For Yak:

Catherine Wang  
Brett P. Ferenchak  
Bingham McCutchen LLP  
2020 K Street, N.W.  
Washington, DC 20006  
(202) 373-6697 (Tel)  
(202) 373-6001 (Fax)  
catherine.wang@bingham.com  
brett.ferenchak@bingham.com

For USD:

Todd D. Daubert  
Melissa S. Conway  
Kelley Drye & Warren LLP  
3050 K Street, NW, Suite 400  
Washington, DC 20007-5108  
(202) 342-8400  
(202) 342-8451 (Fax)  
tdaubert@kelleydrye.com  
mconway@kelleydrye.com

(a)(4) The following entities hold, directly or indirectly, a 10% or greater interest<sup>6</sup> in Applicants as calculated pursuant to the Commission ownership attribution rules for wireline telecommunications carriers:

Ownership of Assignee:

- 1) The following entity holds a ten percent (10%) or greater direct interest in **Yak America Inc.**:

Name:	Blackbird Corporation
Address:	15051 SW 49th Court Miami, Florida 33027
Citizenship:	U.S.
Principal Business:	Investment
% Interest:	100%

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<sup>6</sup> Unless otherwise indicated, the ownership interests provided herein represent both equity and voting interests.

- 2) The following entities hold a ten percent (10%) or greater direct or indirect interest in **Blackbird Corporation**:

Name: Jose Cadi  
Address: 15051 SW 49th Court  
Miami, Florida 33027  
Citizenship: U.S.  
Principal Business: Individual  
% Interest: 100%

No other person or entity, directly or indirectly, owns or controls a 10% or greater interest in Yak.

Ownership of Assignor:

- 1) The following entity currently holds a ten percent (10%) or greater direct interest in **USD CLEC, Inc. Debtor-in-Possession (formerly USD CLEC, Inc.)**:

Name: US Datanet Corporation ("Datanet")  
Address: 318 S. Clinton Street  
Suite 502  
Syracuse, NY 13202  
Citizenship: U.S.  
Principal Business: Telecommunications  
% Interest: 100%

No person or entity, directly or indirectly, currently owns or controls a 10% or greater interest in Datanet.

(a)(5) Applicants certify that they are not subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1998. *See* 21 U.S.C. § 853a; *see also* 47 C.F.R. §§ 1.2001-1.2003.

(a)(6) A description of the proposed Transaction is set forth in **Section III** above.

(a)(7) (i) Before the transaction was completed, USD provided a variety of casual calling/dial around services in all of the contiguous 48 states, and the District of Columbia. USD also provided incoming local exchange services in New York and hosted IP communication services, audio conferencing services, nationwide integrated VoIP PRI, dedicated Internet services, IP termination-origination services and collocation services.



(ii) Yak provides basic 1+ long distance services, 10-10 casual calling services and calling card services in all of the contiguous 48 states, and the District of Columbia.

**(a)(8)** Applicants respectfully submit that this Application is eligible for streamlined processing pursuant to Section 63.03 of the Commission's Rules, 47 C.F.R. §63.03. In particular, this Application is eligible for streamlined processing pursuant to Section 63.03(b)(2)(i) because, immediately following the transaction, Assignee (and its Affiliates) had a market share in the interstate, interexchange market of less than 10 percent, and the Assignee (and its Affiliates) will provide competitive telephone exchange services or exchange access services (if at all) exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the transaction, and none of the Applicants (or their Affiliates) is dominant with respect to any service.

**(a)(9)** Applicants do not anticipate filing any other applications with the Commission with respect to this transaction.

**(a)(10)** No party is requesting special consideration because it is facing imminent business failure. However, when the transaction closed, the Sellers were in the process of restructuring. The transaction maintained an uninterrupted offering of casual calling/dial-around service to customers.

**(a)(11)** Not applicable.

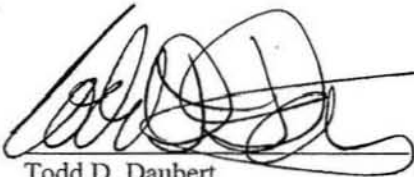
**(a)(12)** The transaction served the public interest by ensuring that customers would continue to have ready access to convenient and affordable high-quality casual calling/dial around service. The transaction did not result in customer confusion as customers received notice that a casual calling/dial around service provider that they had used in the past would change to Yak. In fact, many customers have actually benefited from the lower rates that Yak currently charges. Further, as evidenced by Yak's existing operations and authority to provide service, Yak has the



technical, managerial and financial resources to continue to provide high-quality services to the affected customers.

**VI. CONCLUSION**

For the reasons stated above, Applicants respectfully submit that the public interest, convenience, and necessity would be furthered by a grant of this Application for the acquisition by Yak of substantially all of the assets related to the operation of USD's casual calling/dial-around business.



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Respectfully submitted,



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Counsel for Yak America, Inc.


Dated: April 8, 2009

## VERIFICATION

I, Jose Cadi, state that I am the President of Yak America, Inc. ("Yak"); that I am authorized to make this Verification on behalf of Yak; that the foregoing filing was prepared under my direction and supervision; and that the contents with respect to Yak are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct. Executed this

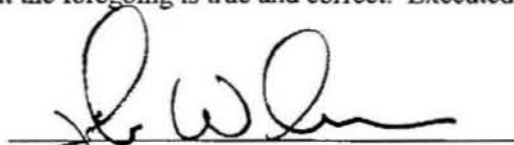
2 day of ~~March~~, 2009.  
APRIL

  
\_\_\_\_\_  
Jose Cadi  
President  
Yak America, Inc.

## VERIFICATION

I, John Turner, state that I am the Executive Vice President and Chief Strategy Officer of USD CLEC, Inc.; that I am authorized to make this Verification on behalf of USD CLEC, Inc.; that I have reviewed the foregoing filing; and that the contents with respect to USD CLEC, Inc. are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 8<sup>th</sup> day of April, 2009.

  
\_\_\_\_\_  
John Turner  
Executive VP and Chief Strategy Officer  
USD CLEC, Inc.